KAREN P. HEWITT
United States Attorney
A. DALE BLANKENSHIP
Assistant U.S. Attorney
California State Bar No. 235960
Federal Office Building
880 Front Street, Room 6293
San Diego, California 92101-8893
Telephone: (619) 557-6199/(619) 235-2757 (Fax)
Email: Dale.Blankenship@usdoj.gov

Attorneys for Plaintiff
United States of America

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, CARLOS CRUZ-SANCHEZ, Defendant.	Criminal Case No. 08CR2025-DMS DATE: August 15, 2008 TIME: 11:00 a.m. GOVERNMENT'S NOTICE OF MOTION AND MOTION FOR RECIPROCAL DISCOVERY AND FINGERPRINT EXEMPLARS

NOTICE OF MOTIONS

TO: David J. Zugman, Esq, Counsel for defendant Carlos Cruz-Sanchez,

PLEASE TAKE NOTICE that on Friday, August 15, 2008, at 11:00 a.m., or as soon thereafter as counsel may be heard, plaintiff, UNITED STATES OF AMERICA, by and through its counsel, KAREN P. HEWITT, United States Attorney, and A. DALE BLANKENSHIP, Assistant United States Attorney, will move the court for an order granting the Government's Motion for Reciprocal Discovery and Fingerprint Exemplars.

//

//

//

//

//

MOTIONS

COMES NOW the plaintiff, UNITED STATES OF AMERICA, by and through its counsel, KAREN P. HEWITT, United States Attorney, and A. DALE BLANKENSHIP, Assistant United States Attorney, will hereby move the court for an order granting the Government's motions for reciprocal discovery and fingerprint exemplars.

DATED: August 11, 2008.

Respectfully submitted,

KAREN P. HEWITT
United States Attorney

s/ A. Dale Blankenship
A. DALE BLANKENSHIP
Assistant United States Attorney
Attorneys for Plaintiff
United States of America
Email: Dale.Blankenship@usdoj.gov

KAREN P. HEWITT
United States Attorney
A. DALE BLANKENSHIP
Assistant United States Attorney
California State Bar No. 235960
Federal Office Building
880 Front Street, Room 6293
San Diego, California 92101-8893
Telephone: (619) 557-6199/(619) 235-2757 (Fax)
Email: Dale.Blankenship@usdoj.gov

Attorneys for Plaintiff
United States of America

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. CARLOS CRUZ-SANCHEZ, Defendant.	Criminal Case No. 08CR2025-DMS DATE: August 15, 2008 TIME: 11:00 a.m. STATEMENT OF FACTS AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF GOVERNMENT'S MOTION FOR RECIPROCAL DISCOVERY AND FINGERPRINT EXEMPLARS

COMES NOW the plaintiff, UNITED STATES OF AMERICA, by and through its counsel, KAREN P. HEWITT, United States Attorney, and A. DALE BLANKENSHIP, Assistant United States Attorney, and hereby files the attached statement of facts and memorandum of points and authorities in support of government's motion for reciprocal discovery and fingerprint exemplars.

//

//

//

//

//

//

//

I

STATEMENT OF THE CASE

On June 18, 2008, a federal grand jury in the Southern District of California returned a one-count Indictment charging Defendant with attempted re-entry, in violation of Title 8, United States Code, Section 1326(a) and (b). Defendant was arraigned on the Indictment on June 20, 2008, and entered a not guilty plea.

II

STATEMENT OF FACTS

A. INSTANT OFFENSE

On May 6, 2008, United States Border Patrol Agent Tito Barrientos was performing line watch duties in the El Centro Border Patrol Station area of responsibility. At approximately 6:20 a.m., a remote video surveillance system ("RVSS") operator informed Agent Barrientos that an individual climbed over the international boundary fence in an area known as "Diamond's Truck Lot," which is located approximately .3 miles west of the Calexico, California, West Port of Entry. Agent Barrientos responded to the area and encountered an individual, later identified as Defendant, Carlos Cruz-Sanchez, next to the boundary fence.

Agent Barrientos approached Defendant and identified himself as a United States Border Patrol Agent. As Agent Barrientos approached Defendant, he began climbing the fence, back toward Mexico. Agent Barrientos informed Defendant that Mexicali, Mexico police officers were on the other side. Defendant saw the Mexican police officers and climbed back down the fence. Defendant then told Agent Barrientos that he was not doing anything wrong. Agent Barrientos then asked Defendant his country of citizenship and whether he had documents to enter the United States. Defendant responded that he was a citizen of Mexico without documents to enter the United States. Agent Barrientos placed Defendant under arrest and transported him to the El Centro Border Patrol Station for processing.

At the station, Agent Barrientos conducted a Department of Homeland Security records check. The records check revealed that Defendant had a lengthy criminal and immigration record. Agents advised Barrientos of his Miranda rights and Defendant invoked.

B. DEFENDANT'S CRIMINAL HISTORY

On March 10, 1995, Defendant was convicted in Washington Superior Court for solicitation to deliver a controlled substance in violation of Washington Revised Code § 69.50.401(a)(1)(iii), and he was sentenced to 16 months' custody. On September 2, 1996, Defendant was convicted in Washington Superior Court for unlawful solicitation to deliver a controlled substance in violation of Washington Revised Code § 69.50.401(a)(1)(iii), and he was sentenced to 31 months' custody. On March 12, 1998, Defendant was convicted in Oregon Superior Court of delivery of a controlled substance in violation of Oregon Revised Statute § 475.992 And sentenced to 18 months' custody. On October 7, 1999, Defendant was convicted in the United States District Court, District of Oregon, for being a deported alien found in the United States in violation of 8 U.S.C. § 1326 and he was sentenced to 21 months' custody.

C. DEFENDANT'S IMMIGRATION HISTORY

Defendant has been ordered removed from the United States by an immigration judge on at least two occasions, August 25, 1995, and October 23, 1996. Defendant was mostly recently removed from the United States on April 22, 2008.

III

GOVERNMENT'S MOTIONS

A. UNITED STATES' MOTION FOR RECIPROCAL DISCOVERY

The Government has voluntarily complied and continues to comply with the requirements of Rule 16(a). To date, the Government has provided 160 pages of discovery, and 1 cd to Defendant as well as an audiotape copy of Defendant's removal proceedings. The United States, pursuant to Rule 16(b), hereby requests defendant to permit the United States to inspect, copy, and photograph any and all books, papers, documents, photographs, tangible objects, or make copies of portions thereof, which are within the possession, custody or control of defendant and which he intends to introduce as evidence in his case-in-chief at trial.

The United States further requests that it be permitted to inspect and copy or photograph any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with this case, which are in the possession or control of defendant, which he intends to introduce as evidence-in-chief at the trial or which were prepared by a witness whom defendant intends to call as a witness. The United States also requests that the court make such orders as it deems necessary under Rule 16(d)(1) and (2) to insure that the United States receives the discovery to which it is entitled.

Federal Rule of Criminal Procedure 26.2 requires the production of prior statements of all witnesses, except the defendant. The time frame established by the rule requires the statement to be provided after the witness has testified, as in the Jencks Act. Therefore, the United States hereby requests that defendant be ordered to supply all prior statements of defense witnesses by a reasonable date before trial to be set by the court. This order should include any form these statements are memorialized in, including but not limited to, tape recordings, handwritten or typed notes and/or reports.

B. THE UNITED STATES'S MOTION FOR FINGERPRINT EXEMPLARS SHOULD BE GRANTED

Part of the United States' burden of proof in this case is to satisfy the jury that the Defendant is the same individual who was deported from the United States to Mexico. To make that showing, the United States will call an expert in fingerprint identification to testify that the Defendant is in fact the individual whose fingerprints appear on the warrant of deportation. The most efficient and conclusive manner of establishing this information is to permit the expert witness himself to take a set of Defendant's fingerprints for comparison.

Defendant's fingerprints are not testimonial evidence. See Schmerber v. California, 384 U.S. 757 (1966). Using identifying physical characteristics, such as fingerprints, does not violate Defendant's Fifth Amendment right against self-incrimination. See United States v. DePalma, 414 F.2d 394, 397 (9th Cir. 1969); Woods v. United States, 397 F.2d 156 (9th Cir. 1968). The United States therefore respectfully requests that the Court order that Defendant make himself available for fingerprinting by the United States' fingerprint expert.

//

//

//

//

IV

CONCLUSION

For the foregoing reason, the Government respectfully requests that its motions for reciprocal discovery and fingerprint exemplars be granted.

DATED: August 11, 2008.

Respectfully Submitted,

KAREN P. HEWITT
United States Attorney

s/ A. Dale Blankenship
A. DALE BLANKENSHIP
Assistant United States Attorney
Attorneys for Plaintiff
United States of America
Email: Dale.Blankenship@usdoj.gov

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. CARLOS CRUZ-SANCHEZ, Defendant.	)	Criminal Case No. 08CR2025-DMS **CERTIFICATE OF SERVICE**

IT IS HEREBY CERTIFIED THAT:

I, A. DALE BLANKENSHIP, am a citizen of the United States and am at least eighteen years of age. My business address is 880 Front Street, Room 6293, San Diego, California 92101-8893.

I am not a party to the above-entitled action. I have caused service of **NOTICE OF MOTION AND MOTION FOR RECIPROCAL DISCOVERY and FINGERPRINT EXEMPLARS** on the following parties by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

David J. Zugman, Esq.
dzugman@burchamzugman.com

I hereby certify that I have caused to be mailed the foregoing, by the United States Postal Service, to the following non-ECF participants on this case:

None

the last known address, at which place there is delivery service of mail from the United States Postal Service.

I declare under penalty of perjury that the foregoing is true and correct. Executed on August 11, 2008.

s/ A. Dale Blankenship
A. DALE BLANKENSHIP